

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JACLYN SCHUERHOLZ

*

*

v.

* Civil Action No. WMN-15-1990

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EUGENE COKER et al.

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MEMORANDUM

Before the Court is a Motion for Summary Judgment filed by Defendant Officers Eugene Coker and Ricardo Cabreja. ECF No.

61. The motion is fully briefed. Upon review of the motion and the applicable case law, the Court determines that no hearing is necessary, Local Rule 105.6, and that the motion must be granted.

This case arises out of an incident that occurred late in the evening of August 25, 2013, in Baltimore's Fells Point neighborhood. Plaintiff's account and Defendants' account of the incident differ as to many of the details, but the parties do agree as to the following. Plaintiff and a male friend, Jeffery Machiran, took a taxi cab from a Fells Point bar where they had been drinking and socializing with friends but discovered at some point that they did not have any means by which to pay the cab driver. Defendants Coker and Cabreja, who are Baltimore City Police Officers, were summoned to the scene and, by the end of their encounter with the couple, Plaintiff

and Mr. Machiran were arrested for "Disorderly Conduct" and "Theft, Less than \$100."

Plaintiff filed a Complaint in the Circuit Court for Baltimore City alleging that, in the course of her arrest, Officers Coker and Cabreja utilized excessive force which caused her "severe physical and emotional trauma that continues to this date." Compl. ¶ 14 (ECF No. 2). She alleges that her injuries "include, but are not limited to seven broken ribs, a collapsed lung, contusions, anxiety, emotional distress, etc." Id. As causes of action, she asserted claims of battery (Count 1); violations of Articles 16, 19, and 24 of the Maryland Declaration of Rights (Count 2); negligence (Count 3); and violations of the Fourth, Eighth and Fourteenth Amendments of the United States Constitution, those claims being brought pursuant to 42 U.S.C. § 1983 (Count 4). In addition to Officers Coker and Cabreja, Plaintiff named as Defendants the Mayor and City Council of Baltimore (City) and the Baltimore City Police Department (BPD).

After the case was removed to this Court, Plaintiff filed a motion to remand and Defendants City and BPD filed motions to dismiss. On October 22, 2015, this Court issued a Memorandum and Order denying the motion to remand and granting the motions

to dismiss.¹ ECF No. 31. The City's motion was granted on the ground that the BPD is an agency of the State of Maryland, and not the City, and therefore the City has no liability based upon the conduct of officers of the BPD. The BPD's motion was granted as to all of the Maryland state law claims on the ground that, as a State agency, it has sovereign immunity against those claims. As to the federal constitutional claims, the Court granted the motion after noting that there were no facts alleged from which it could be concluded that the Officers' actions were pursuant to any policy or custom of the BPD. The Court also noted that the Complaint stated no plausible Eighth Amendment claim as that amendment is only applicable to convicted and sentenced prisoners. By that same reasoning, the Court dismissed Count 4 as to the Officers to the extent the claim in that count was premised on the Eighth Amendment.

After the discovery deadline passed, Defendant Officers filed the pending Motion for Summary Judgment. Their motion is well supported with admissible evidence, including: a recording of the 911 call; Plaintiff's discovery responses; medical records; affidavits from both Defendants; the Statement of Probable Cause for her arrest; and, perhaps of most

¹ Plaintiff never filed any opposition to these Motions to Dismiss despite having twice asked for and being granted extensions of time to allow her counsel to "further evaluate" the motions. ECF No. 19 at 1; ECF No. 29 at 2.

significance, the transcript of Plaintiff's deposition in which Plaintiff made and was then confronted with numerous material inconsistencies in her testimony. This evidence submitted by Defendant Officers details the following series of events.

At approximately 11:17 p.m. on the evening of August 25, 2013, the BPD received a 911 call from cab driver Rupert Campbell. Mot., Ex. E (audio file of 911 call). In that call, Mr. Campbell complained that two passengers, later identified as Plaintiff and Mr. Machiran, after having used his cab "as a hotel,"² were refusing to pay his fare. Mr. Campbell also stated that Mr. Machiran was making insulting comments and, during the course of the call, an individual is heard arguing with Mr. Campbell in the background. Id. From the content of the exchange, that individual was clearly Mr. Machiran.

In response to the 911 call, Officer Coker arrived at the Royal Farms store located at the corner of Dean Street and Fleet Street and spoke with Mr. Campbell. Coker Aff. ¶¶ 2, 3 (ECF No. 61-8). Mr. Campbell reported that the couple had incurred a \$13 fare which they were refusing to pay. Id. ¶ 5. A witness at the scene, Phillip Atwood, confirmed that the couple had refused to pay their fare and had given Mr. Campbell difficulty. Id. ¶

² From Mr. Campbell's statements in the rest of the 911 call and from his later statement to Officer Coker, it is clear that Mr. Campbell was politely referring to the couple engaging in sex in the back of his cab.

6. Mr. Campbell then pointed in the direction of the 600 block of South Dean Street where Plaintiff and Mr. Machiran had drifted on foot and where they had been engaging in sexual activity for the last five minutes. Id. ¶ 7. Officer Coker then drove his marked police car to that location, which was about a block away. Officer Coker approached the couple and observed Mr. Machiran with his head under Plaintiff's dress and heard Plaintiff making sounds consistent with sexual stimulation. Id. ¶¶ 9, 10. Officer Coker announced his presence as "Baltimore Police" and Mr. Machiran removed his head from under Plaintiff's dress. Id. ¶ 11.

Officer Cabreja arrived at the scene about that time. From the couple's slurred speech and potent body odor, Officers Coker and Cabreja quickly concluded that both Plaintiff and Mr. Machiran were intoxicated. Id. ¶ 14. They explained that they were responding to the cab driver's complaint about the unpaid fare. Mr. Machiran initially argued with the Officers but eventually agreed to go with Officer Cabreja to the ATM in the Royal Farms store to retrieve some cash to pay the fare. Once there, however, Mr. Machiran claimed that he did not have an ATM or debit card with which to retrieve any cash. Id. ¶¶ 17-18. Officer Cabreja returned with Mr. Machiran to where Officer Coker was waiting with Plaintiff.

The Officers continued their attempt to persuade the couple to pay their cab fare but Mr. Machiran responded with a profanity-laced tirade as to why he felt he did not need to pay Mr. Campbell the cab fare, including his making disparaging comments regarding Mr. Campbell's nationality. Id. ¶¶ 19, 20. Mr. Machiran and Plaintiff also became increasing loud and boisterous despite the Officers' attempts to persuade them to lower their voices. When the couple refused to adjust their behavior, Officer Coker placed them in handcuffs. Id. ¶¶ 23, 24. Concerned that the couples' continued disruptive and loud behavior was disturbing this residential neighborhood, the Officers moved them closer to the Royal Farms store while awaiting the transport wagon to take them to the Central Booking Intake Facility.

While waiting for that transport, "[o]n several occasions, Plaintiff attempted to rise to her feet. Each time, [Officer Coker] returned Plaintiff to a seated position." Id. ¶ 28. This continued for approximately ten minutes as Plaintiff continued to yell out and try to get up. Cabreja Aff. ¶ 19 (ECF No. 61-10). When the transport arrived, the Officers had to physically lift and force the Couple into the transport vehicle. Id. ¶ 21. Mr. Campbell was never paid for his services. The subsequent charges against Plaintiff of "Disorderly Conduct" and "Theft, Less than \$100" that arose from this incident were

eventually not pressed in exchange for Plaintiff's agreement to do 25 hours of community service. Eastside District Court Record (ECF No. 61-11).

In moving for summary judgment, Defendant Officers make the following legal arguments. Defendants argue that all claims against Officer Cabreja must be dismissed because Plaintiff stated in her deposition that it was Officer Coker who assaulted her but made no similar claim against Officer Cabreja. Pl.'s Dep. 134-35 (ECF No. 67-3). Defendants argue that the claim of battery against Officer Coker should be dismissed as well because police officers "have the right to take reasonably necessary measures to make the arrest in a manner that protects both the public and themselves," and "[i]n doing so, they may use some degree of force." ECF No. 61-1 (quoting Tavakoli-Nouri v. State, 779 A.2d 992, 1001 (Md. Ct. Spec. App. 2001)).

In light of the couple's continued disruptive behavior and Plaintiff's continued efforts to stand up after she was instructed to remain seated, Defendants contend that the limited force applied was reasonable.

In arguing that Plaintiff's claims under the Maryland Declaration of Rights must be dismissed, Defendant Officers highlight the somewhat careless pleading of Plaintiff's counsel. The Complaint invokes Article 16 which relates to capital punishment and cruel and unusual punishment which obviously has

no relation to this action. Complaint also invokes Article 19 which relates to the right to a speedy trial, again, a provision that is irrelevant to this action. Similarly, Plaintiff's counsel included a claim under the Eighth Amendment to the United States Constitution that could have no possible relation to this case. The Eighth Amendment addresses excessive bail and cruel and unusual punishment. Plaintiff's counsel conceded in the Opposition to the Motion for Summary Judgment that these claims should be dismissed. ECF No. 67-1 at 10.³

Plaintiff's negligence claim is also at odds with the allegations in the Complaint. It has long been established that negligence is not an intentional tort but, instead, arises where an individual's unintentional failure to use reasonable care results in injury to another. Adams v. Carey, 190 A. 815, 821 (Md. 1937) (noting that "the absence of intent is essential to the legal conception of negligence"). Here, Plaintiff is clearly alleging intentional conduct. While there is a narrow exception to the unintentional rule where an intentional act causes an unintended harmful consequence, Ghassemeieh v. Schafer, 447 A.2d 84, 89-90 (Md. Ct. Spec. App. 1982), that is not what is alleged here.

³ As noted above, in ruling on BPD's Motion to Dismiss, this Court has already held that any claim premised on the Eighth Amendment should be dismissed.

The remaining two claims, the excessive force claims under the Fourth Amendment to the United States Constitution and under Article 26 of the Maryland Declaration of Rights, unlike Plaintiff's other claims, are at least consistent with the allegations in the Complaint. These federal and state excessive force claims are generally construed in pari materia with one another. Gadson v. State, 668 A.2d 22, 26 n.3 (Md. 1995).⁴ Excessive force claims under both are analyzed under the three factor "objective reasonableness" standard set out by the Supreme Court in Graham v. Conner, 490 U.S. 386, 388 (1989).

To establish their excessive force claim, Plaintiff must show that the force used by the Officers in making her arrest was not "objectively reasonable" in light of the facts and circumstances confronting them. Graham, 490 U.S. at 397. Objective reasonableness is highly fact-specific and requires a "totality of the circumstances" analysis. Tennessee v. Garner, 471 U.S. 1, 8-9 (1985). "Determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." Graham, 490 U.S. at 396 (citation omitted). The

⁴ Claims under Maryland's Declaration of Rights, however, are not subject to the defense of qualified immunity. Okwa v. Harper, 757 A.2d 118, 140 (Md. 2000).

Supreme Court in Graham set out the following three factors to be considered in conducting that analysis: (1) "the severity of the [suspected] crime at issue," (2) "whether the suspect poses an immediate threat to the safety of the officers or others," and (3) "whether [s]he is actively resisting arrest or attempting to evade arrest by flight." Id.

In moving for summary judgment, the Officers note that they were dealing with two highly intoxicated individuals who were disturbing the peace, late at night, in a residential neighborhood. They were lawfully arrested for "Disorderly Conduct" and "Theft, Less than \$100" and, while awaiting transport to Central Booking, Plaintiff continued to yell at the Officers and repeatedly tried to get up from her seated position, despite her being instructed to remain seated. Officer Coker's returning her to a seated position was a reasonable and measured response. Furthermore, the fact that, by Plaintiff's own description, the Officers had to "lift[] and force[her] into the wagon" is an indication that she was resisting the Officers.

In opposing summary judgment, Plaintiff's counsel makes no counterargument that Plaintiff could establish an excessive force claim under the facts as presented by the Officers. Instead, Plaintiff simply offers, through her deposition testimony and her affidavit, a blanket denial that the events

actually transpired as described by the Officers. Plaintiff offers no further support for this blanket denial aside from her own testimony and her testimony, quite frankly, lacks any credibility.

The untrue statements with which Plaintiff was confronted in her deposition are numerous and the Court will only highlight the most relevant. For instance, apparently unaware that Defendants had obtained her medical records, Plaintiff denied that she used any illegal drugs on the night of the incident. Pl.'s Dep. at 28-29, 65. The urine analysis conducted at Johns Hopkins Hospital the next day, however, revealed a positive test for the presence of cocaine in Plaintiff's system. Pl.'s Suppl. Answers to Interrog. No. 17 (ECF No. 61-4). Before Plaintiff was aware that Defendant had obtained her personnel records from her former employer, Plaintiff testified that she was forced to leave her job because she was unable to work as a result of the injuries she sustained when she was arrested on August 25, 2013. Pl.'s Dep. at 17. Her personnel records, however, show that she actually lost her job three weeks earlier because of injuries she sustained in an automobile accident on August 1, 2013. ECF No. 61-6.

Concerning that August 1, 2013, accident, unaware the Defendants had obtained the records from the court proceeding in which Plaintiff faced DUI charges related to the accident,

Plaintiff initially testified in her deposition that her car was rear-ended by another vehicle in a hit-and-run accident, and that her level of sobriety had nothing to do with what happened. Pl.'s Dep. at 34-36, 81. While she states that the car that she was driving was totaled in that accident, Plaintiff testified that she "really didn't have any injuries to speak of," her only injury being a cut above her eye. Id. at 34-35. In fact, the accident was a single car accident where Plaintiff crashed into a guard rail at 35 miles per hour while driving with a blood alcohol level of .24%, a level well above the legal limit of .08%. Id. at 83; Emergency Medical Record (ECF No. 70-2). Although Plaintiff, in her deposition, continued to attempt to downplay the injuries she suffered in the August 1, 2013, accident, it is clear that she suffered more serious injuries. In her email to her then-employer the next day, she said she was in a "bad car accident" and was "pretty badly beaten up." ECF No. 61-6. The injuries were apparently significant enough that she could no longer perform the duties of her employment.

Beyond this deposition testimony which is so riddled with misrepresentations so as to have no weight whatsoever, Plaintiff offers no other evidence to substantiate her claims. Plaintiff provides no testimony or statement from her friend, Mr. Machiran, to substantiate her version of the events. While Plaintiff asserts in her affidavit that, as a result of the

excessive force used by Defendants, she had seven broken ribs, she offers no medical records in support of that assertion. Medical records, including x-rays that she claims were taken, Pl.'s Dep. at 55-56, certainly is evidence that would be readily available and definitive on the issue of Plaintiff's supposed injuries. Defendants' counsel represents that he made repeated and multiple requests for those medical records but they were never produced. ECF No. 70-1 at 3 n.3. In fact, aside from Plaintiff's deposition and affidavit, Plaintiff's counsel submitted nothing in support of Plaintiff's claims that is specifically related to the incident in question.⁵ It would appear from the record that Plaintiff's counsel actually made little attempt to take any discovery in support of Plaintiff's claims.

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (citing predecessor to current Rule 56(a)). Summary judgment is "not a disfavored procedural shortcut, but rather [is] an integral part of the Federal Rules as a whole, which are

⁵ Plaintiff's counsel did submit with his Opposition copies of two general statements of BCPD Policies. ECF Nos. 67-4, 67-5.

designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex, 477 U.S. at 327 (quoting Rule 1 of the Federal Rules of Civil Procedure). "The function of a motion for summary judgment is to smoke out evidence to see if there is any case, i.e. any genuine dispute as to any material fact, and if there is no case, to conserve judicial time and energy by avoiding an unnecessary trial and by providing speedy and efficient summary disposition." Bland v. Norfolk & Southern Railroad Co., 406 F.2d 863, 866 (4th Cir. 1996).

A movant seeking summary judgment has the initial burden of identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file together with any affidavits, which it believes demonstrate the absence of any genuine issues of material fact. Here, Defendant Officers have clearly met that burden. Once that burden has been met, the non-moving party must respond by presenting cognizable evidence sufficient to establish genuine issues of dispute as to the material facts in the case. The non-movant's failure to present "affirmative evidence" in this regard is fatal to its position. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257-58 (1986). Speculation, conclusory allegations, and the non-movant's denials are insufficient to raise genuine issues of material fact. Matsushita Electrical Industrial Co. v. Zenith Radio

Corp., 475 U.S. 574, 587 (1986). The party opposing a motion for summary judgment may not rest upon the mere allegations or denials of his pleading but instead must, by affidavit or other evidentiary showing, set out specific facts showing a genuine dispute for trial. Fed. R. Civ. P. 56(c)(1).

Plaintiff's counsel is correct that credibility determinations are rarely considered on motions for summary judgment. Plaintiff's testimony in this action, however, is so demonstratively untrustworthy that the lack of any independent evidence in support of that testimony is fatal to her claim. The Court finds that Plaintiff's conclusory allegations and blanket denials alone do not generate a genuine dispute of material fact and on the record before this Court, no reasonable jury could find in Plaintiff's favor. Accordingly, the Motion for Summary Judgment must be granted.

An order consistent with this memorandum will issue.

_____/s/_____

William M. Nickerson
Senior United States District Judge

DATED: October 31, 2016